

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK

**MEMO ENDORSED**

HARRY NIEBERG, an individual, and  
HARRY NIEBERG FUNERAL HOME INC., a New  
York corporation,

Plaintiffs,

v.

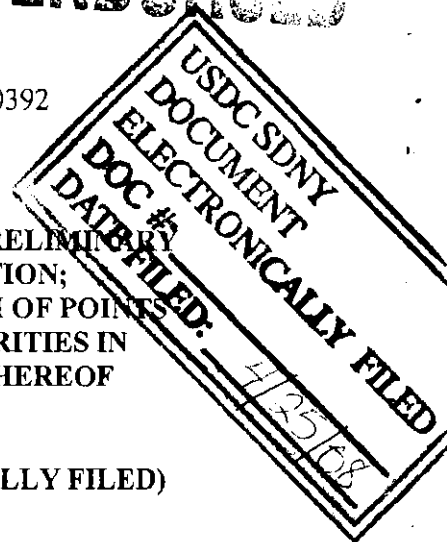
NIEBERG MIDWOOD CHAPEL INC., a New York  
Corporation; MIDWOOD MEMORIAL CHAPEL INC.,  
a New York corporation,

Defendants.

Case No. : 08 CV 00392

**MOTION FOR PRELIMINARY  
INJUNCTION;  
MEMORANDUM OF POINTS  
AND AUTHORITIES IN  
SUPPORT THEREOF**

**(ELECTRONICALLY FILED)**



Pursuant to Federal Rule of Civil Procedure 65, Plaintiffs, HARRY NIEBERG ("Harry"), and HARRY NIEBERG FUNERAL HOME INC. ("Nieberg Funeral"), by and through their attorneys of the law firm of Lewis Brisbois Bisgaard & Smith LLP, hereby submit this Motion for Preliminary Injunction.

This Motion for Preliminary Injunction is based on Plaintiffs' claims for service mark infringement pursuant to the Lanham Act against Defendants NIEBERG MIDWOOD CHAPEL INC. ("Midwood Chapel") and MIDWOOD MEMORIAL CHAPEL INC. ("Midwood Memorial") (collectively the "Defendants"); service mark infringement pursuant to New York common law against Midwood Chapel and Midwood Memorial; unfair competition pursuant to New York common law against Midwood Chapel and Midwood Memorial; tortious interference with contract under New York law against Midwood Chapel and Midwood Memorial; tortious interference with prospective economic advantage under New York law against Midwood Chapel and Midwood Memorial; and declaratory relief pursuant to 28 U.S.C. §2201 *et seq.* and 15 U.S.C §1051 *et seq.* against Midwood Chapel, as supported by the attached Memorandum of Points and Authorities

*Motion denied. For oral opinion, see  
record of proceedings.  
So ordered.*

4836-3557-9394.2

*April 23, 2008*

*15*

*United States District Judge*